

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 10831

MELODY S. ISAAK,)
)
Plaintiff,)
v.)
)
NORTH CAROLINA DEPARTMENT OF)
ENVIRONMENTAL QUALITY, MICHAEL)
S. REGAN, in his individual and official)
capacity, JOHN A. NICHOLSON in his)
individual and official capacity,)
)
Defendants.)

DEFENDANTS'
MOTION TO DISMISS
AND STAY OF PROCEEDINGS

NOW COME Defendants North Carolina Department of Environmental Quality (“DEQ” or “Department”), Michael S. Regan, in his individual and former official capacities, and John A. Nicholson, in his individual and official capacity, (collectively “Defendants”) by and through their undersigned counsel, and respectfully move to dismiss Plaintiff’s Complaint filed August 11, 2021, pursuant to Rules 12(b)(1), 12(b)(2), and 12(b)(6) of the North Carolina Rules of Civil Procedure. Defendants assert that the Complaint should be dismissed in its entirety, or in part, on the grounds of sovereign immunity, lack of subject matter jurisdiction and/or lack of personal jurisdiction, and for failure to state a claim upon which relief may be granted.

Defendants also seek a stay of the proceedings pending resolution of the Motion to Dismiss. A stay is necessary until a ruling on this Motion is obtained because it seeks the dismissal of Plaintiff’s claims in their entirety or in part, which would either resolve the matter in its entirety or significantly narrow the claims and facts relevant for the purposes of discovery, and for responding to Plaintiff’s Complaint.

Defendants will file an appropriate Notice of Hearing after consulting with Plaintiff's counsel to identify a date for a hearing on Defendants' Motion to Dismiss, and Defendants intend to file a Memorandum of Law in Support of this Motion, as allowed by the North Carolina Rules of Civil Procedure.

In further support of this motion, Defendants state the following:

1. On August 11, 2021, Plaintiff filed her Complaint in Wake County Superior Court.
2. The undersigned counsel accepted service of the Complaint, along with Plaintiff's First Set of Discovery Requests, on behalf of Defendant Michael S. Regan, in his individual capacity, on August 16, 2021.
3. Defendant Department of Environmental Quality, along with Defendant Michael S. Regan in his former official capacity and Defendant John A. Nicholson in his official capacity, were served by certified mail on August 17, 2021.
4. Defendant John A. Nicholson was served in his individual capacity by Chatham County Sheriff at his personal residence on August 18, 2021.
5. Defendants filed a Motion for Extension of Time, which was granted on September 15, 2021. Defendants' Motion for Extension explicitly reserved and did not waive any rights or defenses that might otherwise be available to assert in any later responsive filings. Defendants' time to file their Answer or otherwise respond to the Complaint was extended up to and including October 18, 2021. By agreement, the parties also extended the time in which to complete discovery by thirty (30) days.
6. Plaintiff's Complaint asserts four distinct causes of action based upon the same factual allegations: (1) violation of the State Whistleblower Act (N.C. Gen. Stat. § 126-84 *et seq.*) against DEQ, Defendant Regan and Defendant Nicholson in their individual and

official capacities; (2) wrongful termination in violation of public policy against Defendants Regan and Nicholson in their individual capacities; (3) tortious interference with contract against Defendants Regan and Nicholson in their individual capacities; and (4) a *Corum* claim against DEQ, Defendants' Regan and Nicholson in their individual and official capacities. Each of the claims alleged is subject to dismissal based on the following:

- a. Plaintiff's whistleblower claim alleges facts that necessarily defeat her claim and fails to allege facts necessary to make a claim under the Whistleblower Act, and should therefore be dismissed.
- b. Plaintiff's wrongful termination in violation of public policy claim is barred by sovereign immunity, and Plaintiff has failed to plead sufficient facts to make out such a claim.
- c. Plaintiff's claim for tortious interference with contract is barred by sovereign immunity, and Plaintiff has failed to plead that any contract existed between Plaintiff and Defendants.
- d. Plaintiff's *Corum* claim is precluded by the Whistleblower Act and, therefore, Plaintiff fails to state a claim upon which relief can be granted.
- e. For each of her claims, Plaintiff has failed to allege sufficient facts or claims for which relief can be granted.

After the date for hearing this Motion is set, Defendants intend to file a Memorandum of Law in Support of this Motion at an appropriate time as allowed by rule, and which will be incorporated into this Motion by reference. For any defenses not asserted, Defendants expressly

reserve and do not waive such defenses that may be appropriately raised at a later time, and Defendants reserve the right to amend this Motion as allowed by law or rule.

Defendants show further that a Stay of the Proceedings pending a ruling on this Motion to Dismiss is necessary because Plaintiff, simultaneous with the Complaint, served Defendants with Requests for Admission, Interrogatories, and Requests for Production of Documents. Defendants' Motion to Dismiss seeks the dismissal of all claims asserted by Plaintiff. A ruling in Defendants' favor would either dismiss the Complaint in its entirety or narrow substantially the issues for purposes of discovery and otherwise responding. A stay pending resolution of this Motion does not prejudice Plaintiff's ability to seek any recovery to which she may be entitled, and is made in good faith and not for any improper purposes.

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[THE PRAYER FOR RELIEF IS ON THE FOLLOWING PAGE.]

PRAYER FOR RELIEF


Based upon the forgoing reasons, Defendants respectfully request the following relief:

1. That Plaintiff's Complaint be dismissed with prejudice based on sovereign immunity, lack of subject matter jurisdiction and personal jurisdiction, and for failure to state a claim upon which relief can be granted;
2. That all other orders and proceedings in this matter, including discovery, be STAYED pending an order by the presiding Superior Court Judge as to this Motion to Dismiss;
3. That a hearing be held on this Motion;
4. That, if Defendants' Motion to Dismiss is denied, in whole or in part, that Defendants be allowed no less than thirty (30) days to file their Answer.

Respectfully submitted this 18th day of October 2021.

JOSHUA H. STEIN
Attorney General

By:


Phillip T. Reynolds
Special Deputy Attorney General
N.C. State Bar No. 34174
preynolds@ncdoj.gov
M. Shawn Maier
Assistant Attorney General
N.C. State Bar No. 39879
smaier@ncdoj.gov

N.C. Department of Justice
Environmental Section
P.O. Box 629
Raleigh, NC 27602
(919) 716-6000
(919) 716-6767 Fax

Attorneys for Defendants

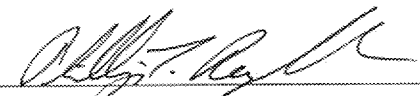
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion to Dismiss was served upon Plaintiff by First Class Mail with a courtesy copy sent via electronic mail addressed to:

M. Jackson Nichols
Nichols, Choi & Lee, PLLC
jack@ncl-law.com
4700 Homewood Court, Suite 220
Raleigh, NC 27609

Attorney for Plaintiff

This 18th day of October 2021.



Phillip T. Reynolds
Special Deputy Attorney General